IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1194 OF 2003

Amarshi Ramji Rathod]
aged about 39 years, residing]
at Mehar Bux Chawl, 1st floor]
Room No.20, Dr. Maheshwari Road]..Appellant
Nur Baug, Dongri, Mumbai 400009](Ori.Accused)

versus

The State of Maharashtra]
at the instance of Dongri]
Police Station, Bombay]..Respondents

Mr. H. H. Ponda for the Appellant.

Mr. P. S. Hingorani, APP for the Respondents - State.

CORAM : D. G. DESHPANDE &
SMT. NISHITA MHATRE, JJ.

DATE : 25TH JUNE, 2007.

ORAL JUDGMENT : (Per : D.G. DESHPANDE, J.):

1. Heard counsel for the Appellant / Accused and the learned APP for the State.

2. Accused has filed this Appeal challenging his conviction under Section 302 of IPC by which he is sentenced to imprisonment for life and fine. The case against the accused was that he had married

Ramila. It was a love marriage. They had two children. Accused also had a first wife. The accused with his wife and children were residing near the house of the mother of deceased. Accused was in the habit of drinking liquor and ill-treating his wife and therefore on 8.3.1996 at about 16.00 hrs. accused had a quarrel with his wife, he abused her and beat her. Children were not at home and thereafter accused poured kerosene on her person and set her ablaze by a match stick. Deceased Ramila shouted for help, neighbours rushed to her rescue and then the accused tried to put off the flames, sustaining burn injuries to the extent of 9%.

3. Deceased Ramila was admitted to the J.J. Hospital where her three statements came to be recorded, all implicating the accused. She died however in the hospital. Then after registering the offence, panchnama was prepared, incriminating articles, viz. kerosene can with kerosene, one match box, etc. were seized. Clothes of Ramila were seized. Accused was arrested on 17.3.1996 after he is discharged from the hospital and then after investigation, charge sheet came to be filed. The trial court accepted the prosecution case mostly

on the basis of the three dying declarations, viz. Exhibit 17 recorded by Special Metropolitan Magistrate, Exhibit 21 recorded by the police and the case history given by Ramila to the doctor, and convicted the accused for murder of his wife Ramila, and, therefore, this appeal.

4. Mr. Ponda, mainly contended that receiving burns to the extent of 9% by the accused falsified the story of the prosecution that it was the accused who set Ramila on fire. He then contended that signature of deceased Ramila was not obtained on the dying declaration. Doctor giving endorsement was not examined. The mother and brother of Ramila were all interested witnesses and P.W. 1 the mother might have tutored Ramila to give statement against the accused. Mr. Ponda also tried to contend that this was a case of suicide and not of homicidal death. He also challenged and attacked the dying declarations recorded by the Sp. M.M., PSI and case history recorded by the doctor and contended that conviction was totally wrong and was liable to be set aside.

5. On the other hand, the learned APP contended

that this is not a case at all for acquittal. Two dying declarations recorded by the Special M.M. and P.S.I. were totally consistent and doctor of all the persons in the world had no reason to record history of homicidal burns at the instance of the husband. He further contended that doctor giving endorsement could not be examined as he has left J. J. Hospital, his whereabouts were not known and this fact has been proved by the prosecution witnesses. He further contended that the accused in his statement under section 313 of the Cr.P.C. has given no explanation as to why and under what circumstances and for what reasons Ramila would commit suicide. He contended that the case has been proved by the prosecution to the hilt and no interference was required in this order of conviction.

6. We have given our anxious consideration to the submissions made by both the sides.

7. Regarding objection of Mr. Ponda about non examination of the doctor who gave an endorsement, the prosecution has examined P.W. 10 Dr. Taher Ahmed Shaikh who was lecturer of Surgery Department

in the Grant Medical College. He brought the original record pertaining to patient Ramila and he gave his evidence on the basis of those records. He stated that Ramila was initially seen by Resident Doctor Nazir and history was given by the patient herself as **"Homicidal burns by the Husband using kerosene, at 4.00 p.m. on 8.3.96."** He also stated that Ramila had burns to face, both the upper limbs, both the lower limbs, abdomen and the back, and, then, in paragraph 4 stated that Dr. Nazir and doctors of his unit were not working in J. J. Hospital and their whereabouts were not known. There is no cross-examination to this doctor to challenge this version. Doctor produced original treatment papers vide Exhibit 24. On record page 85 of the paper book, the first entry at 6.30 p.m. is about history of homicidal burns by husband by using kerosene at 4.00 p.m. on 8/3/96. When Dr. Nazir was not available and his whereabouts were not known, it was not within the competence of the prosecution to examine Dr. Nazir. No questions are put to P.W. 10 Dr. Taher Ahmed Shaikh whether he was conversant with the hand writing and signature of doctor Nazir, therefore, his evidence in that regard has to be accepted.

8. For proving the dying declaration, the prosecution examined P.W. 7 Dattatraya Vishnu Parkhe - Special M.M. As called by the police he went to the J. J. Hospital Female Ward meant for burn cases, saw the condition of the patient Ramila. He enquired with the doctor whether she was in a fit condition to give statement and after the doctor's reply in the affirmative, he recorded her dying declaration. He also obtained endorsement of the medical officer. The dying declaration is at Exhibit 17.

9. However, Mr. Ponda contended that this witness admitted in the cross-examination that police officer briefed him about the matter. This does not at all help the defence in any manner whatsoever. Briefing and tutoring are different and there is no allegation or suggestion to the doctor that he was tutored to record the dying declaration in order to implicate the accused falsely. Mr. Ponda also contended that on page No.2 of Exhibit 17 - dying declaration, which is in reply to question No.4 there was some over-writing. Witness has rejected the suggestion. Repeatedly in his

examination in chief also P.W. 7 has stated that he obtained the endorsement of the doctor. No question was put to him in this regard that the endorsement of the doctor was not obtained at the time and place shown and Dr. Nazir was not present.

10. Second dying declaration is recorded by the police officer and it is proved by P.W. 9 PSI More. He has stated that at 18.40 hours he received a message that one Ramila was brought to J.J. Hospital with 90% burn injuries and that her husband had set her on fire. He immediately went to the emergency ward. Ramila was able to speak, he enquired from the doctor about her fit condition and when doctor gave reply in the affirmative he obtained an endorsement of the doctor and he then recorded the statement. This statement of Ramila was treated as FIR Exhibit 21 along with endorsement of the doctor.

11. It will be clear from his evidence that in both the dying declarations, there is endorsement of Dr. Nazir and the case history recorded by Dr. Nazir also shows that patient Ramila had given history as **"Homicidal burns by the Husband by using**

kerosene."

12. It is true that Sp. M.M. did not obtain the signature of Ramila on the dying declaration and it is also true that Sp. M.M. did not put endorsement on the dying declaration to the effect that the patient was not in a position to give signature or thumb impression. But, that in our opinion, cannot be a ground to reject the dying declaration. No opportunity appears to have been given to Sp. M.M. why the signature was not obtained. She was having 88% burns as per the evidence of P.W. 8 Dr. Chikhalkar. Particulars of burn injuries are as under:

Head Face Neck	04 %
Back	16 %
Front of Trunk	17 %
Rt. Upper Limb	09 %
Lt. Upper Limb	09 %
Rt. Lower Limb	16 %
Lt. Lower Limb	16 %
Per imium	01 %
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	88 %

Witness P.W. 8 in the cross-examination stated that the Rt. Upper Limb and Left Upper Limb sustained 9% burns each which means that there were total burns

to both the hands. He has admitted that **"Always it is not necessary that in case of burns to that extent the patient will not be able to sign or give thumb impression. Either way is possible."** Absence of signature in the dying declaration does not affect the testimony of Sp. M.M. or the PSI. In fact PSI has obtained Ramila's signature on the statement recorded by him i.e. FIR Exhibit 21. So this clearly shows that not obtaining signature by the Sp. M.M. was a simple lapse on his part with no ulterior motive at all.

13. So far as evidence of mother of Ramila is concerned i.e. P.W. 1 Maniben, Mr. Ponda contended that it is impossible to believe that when the mother went to see Ramila in the hospital, Ramila would not disclose as to how she suffered burns. P.W. 1 has given admission that Ramila did not disclose how she sustained burn injuries to her. But it is a fact that P.W. 1 was declared hostile. In the cross-examination she admitted that she was giving false evidence. If that is so, then her evidence has to be rejected. We do not find any force in the submissions of Mr. Ponda that this witness must have tutored Ramila to give statement

against the accused. If that was so firstly she would not have turned hostile. Secondly, she would not have admitted that Ramila did not disclose how she sustained burn injuries . In fact the conduct of the P.W. 1 was noted by the trial court in paragraph 9 wherein it is observed that conduct of the witness is not proper, she was laughing at questions before answering and she was repeatedly submitting that the chapter may be closed. In view of this, the evidence of this witness is of no use either to the prosecution or to the accused.

14. Prosecution then examined P.W. 3 Satish Dayabjai Jitiya, who is brother of Ramila. He went to see her in the hospital but as stated that he did not enquire with her as to how she got burns looking to her condition. He was also declared hostile. Other witness P.W. 4 Ramji Bichar Adiyal was also declared hostile. Because in his police statement, the witness has stated that when Ramila was being taken to the hospital, she was asked and then she told that the accused had poured kerosene on her person. Next witness P.W. 5 Kishor Palji Kalivada is also on the same point and he was declared hostile.

15. It is clear that neither the mother nor the brother nor independent witnesses has supported the prosecution. But that does not take away the effect of two dying declarations and the history recorded by Dr. Nazir.

16. Though defence of the accused that Ramila committed suicide or might have committed suicide. Not a single circumstance in this regard is brought on record. No explanation is given by the accused why Ramila would commit suicide.

17. Mr. Ponda, relied upon a judgment of Punjab and Haryana High Court reported in **AIR 1983 Punjab and Haryana 305 State of Punjab v. Savitri Devi,** which lays down that : **"Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of imagination of the dying person. The Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify the assailant and that he was making the statement without any influence or rancour."** That was an

appeal against acquittal. In the present case nothing has been brought on record that dying declaration of Ramila is the product of tutoring, prompting or a product of imagination of the dying person. We were satisfied that Ramila was in a state of mind to give statement. It was her husband who set her ablaze. Therefore, there was no question of identification. Nothing is brought on record to show that she made those statements under influence or rancour. The judgment relied upon by Mr. Ponda, is of no help to the defence.

18. The trial court has appreciated the evidence properly and rightly relied upon the three dying declarations which, are consistent with each other, which are reliable, trustworthy as neither the Sp. M.M. nor the police officer nor Dr. Nazir had any grudge against the accused to falsely implicate the accused. There is no merit in this Appeal. It is dismissed.

(SMT. NISHITA MHATRE, J.) **(D.G. DESHPANDE, J.)**